Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Seeks Comment on Proposals to Modify the Commission's	)	
Rules Relating to High-Cost Universal Service Support	)	
	)	

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

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SUMMARY

NTCA appreciates the efforts of the Joint Board to attempt to modify the FCC's rules concerning the future basis of high-cost universal service support for rural ILECs and CETCs. All of the proposals in the Public Notice, however, contain some requirements that would jeopardize the sufficiency of the universal service funding mechanisms. NTCA therefore cannot endorse any one proposal in its entirety. NTCA urges the Joint Board to not include statewide averaging and state block grants of federal USF as part of its recommendations to modify the federal high-cost universal service rules for rural ILECs. The Joint Board should instead recommend to the Commission that it:

(1) continue to permit rate-of-return (RoR) rural carriers to base their high-cost universal service support on embedded costs;

(2) continue to allow RoR carriers to use their study area average costs to recover their investment in the total network facilities needed to provide comparable rates and services to customers living in rural and high-cost areas;

(3) continue to establish and enforce more stringent standardized ETC guidelines and public interest test for CETC applicants in rural ILEC service areas;

(4) continue to use the statutory definition of a rural telephone company to determine which carriers are eligible to receive rural high-cost universal service support;

(5) eliminate the identical support rule;

(6) require all CETC universal service support to be based on their own costs; and

(7) expand the base of USF contributors to include all voice over VoIP and IP-enabled service providers.

The Rural Task Force demonstrated convincingly in its recommendation to the Joint Board on September 29, 2000, that statewide averaging would reduce rural ILEC support by more than $1 billion. On December 22, 2000, the Joint Board had the benefit of the lengthy RTF

deliberations and a substantial evidentiary record when the Joint Board endorsed the RTF recommendation stating that it would "serve as a good foundation for implementing a universal service plan that benefits consumers," … provide a "predictable level of universal service support" and "would provide a stable environment for rural carriers to invest in rural America." On May 21, 2001, the Commission agreed and adopted a modified embedded cost methodology to determine federal high-cost support for rural carriers, without statewide averaging. The 2005 Joint Board does not have the benefit of similar deliberations and evidentiary record to support the most recent statewide averaging proposals contain in this Public Notice.

The current use of study area average costs in the high-cost universal service rules have allowed rural carriers to recover their investment in the total network facilities needed to provide comparable rates and affordable services to customers living in rural and high-cost areas. Most rural ILECs serve a single study area in a state and these study areas are generally the highest cost areas in the state. Rural ILECs, unlike non-rural ILECs and large wireless CETCs, do not have high-density, low-cost metropolitan or urban areas that can be used to offset the high-cost of their sparsely populated rural service areas. Basing federal USF support on statewide averages would reduce rural ILEC support dramatically and would significantly undermine a rural ILEC's ability to invest in its network. The Commission correctly recognized this reality in 2001 when it adopted a modified embedded cost methodology to determine rural high-cost support for rural carriers and based that support on each rural ILEC's study area costs.

All four of the Joint Board proposals also advocate the use of block grants whereby a state would receive a block grant of federal USF support. Under these proposals, state commissions would have the discretion to determine which carriers receive federal USF support and how much support based on a state commission's interpretation of the FCC's yet to be defined new federal high-cost support distribution guidelines. Granting authority to state commissions to determine the amount of federal universal service support a carrier would receive would violate the Act and the Tenth Amendment.

The Tenth Amendment provides that "the powers not delegated to the United States by the Constitution, nor prohibited by its States, are reserved to the States respectively, or to the people." Section 254(d) of the Act provides the Commission with the authority to decide how much and to whom federal USF support will be collected and distributed based on **interstate** telecommunications services. In comparison, Section 254(f) provides the states with the authority to adopt regulations not inconsistent with the FCC rules to preserve and advance universal service and allows the states to establish state universal service funding rules based on **intrastate** telecommunications services. Congress clearly envisioned that the Commission would decide federal USF collection and distribution issues and states would decide state USF collection and distribution issues. Delegating to state commissions the sole discretion over decisions concerning the distribution of federal USF support would therefore be contrary to intent of Congress, Section 254 and the Tenth Amendment.

NTCA also recommends that rather than using a per-line freeze, which would unjustifiably punish rural ILECs for providing affordable, reliable, and quality services to rural consumers based on their legitimate costs, the Joint Board should recommend that the proper appropriate approach to control the growth of the high-cost fund is to eliminate the identical support rule and require CETCs to base their support on their own costs. In addition, the Joint Board should recommend the continued use of the statutory definition of a "rural telephone company" to determine which carriers are eligible to receive rural high-cost support. The Joint Board should not attempt to use size alone as a determinant of what type of company is eligible to receive support using the "rural" or "non-rural" mechanism, nor should it attempt to squeeze rural ILECs into a one-size fits all rural/non-rural USF mechanism. The higher costs to serve customers in rural telephone company service areas are a driving force that makes it imperative to retain a separate rural mechanism that will maintain universal service in high-cost, rural and insular areas in a manner consistent with the principles in Section 254(b) of the Act. The Federal-State Joint Board that recommended a modified embedded cost mechanism for rural telephone companies relied on the Rural Task Force recommendation which documented these differences. These differences still exist today and will exist in the foreseeable future.

Lastly, NTCA recommends that the time is ripe for the Commission to expand the list of contributors to include both facilities-based and non-facilities-based VoIP and IP-enabled service providers that connect to or benefit from connection to the public communications network, regardless of the classification of the service as an information service, telecommunications service, private carriage service or some other service. The universe of communications carriers and providers of communications services has expanded far beyond the boundaries that existed when the Commission first identified contributors to the universal service fund. It is time for the Joint Board to recommend to the Commission that it expand the base of contributors to ensure contributions on an equitable and nondiscriminatory basis pursuant to Section 254(d) and ensure the preservation and advancement of the USF mechanisms pursuant to Section 254(b)(5).

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NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS

The National Telecommunications Cooperative Association (NTCA)[1] hereby files its initial comments in response to the Federal-State Joint Board on Universal Service (Joint Board) Public Notice seeking comment on four proposals to modify the Federal Communications Commission's (Commission's or FCC's) rules relating to high-cost universal service support.[2]

I. INTRODUCTION

NTCA appreciates the efforts of the Joint Board to attempt to modify the FCC's rules concerning the future basis of high-cost universal service support for rural ILECs and competitive eligible telecommunications carriers (CETCs). Some of the proposals contain rules, such as eliminating the identical support rule and requiring CETCs to base their high-cost universal service fund (USF) support on their own costs, which would enable the Commission to

[1] NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 560 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.
[2] Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support, CC Docket No. 96-45, FCC 05J-1, Public Notice (rel. August 17, 2005)(Public Notice).

better determine a CETC's universal service support in an equitable manner and slow the future growth of the high-cost fund.[3] All of the proposals, however, contain various other provisions, such as statewide cost/rate averaging, which would undermine the Act's fundamental principle that federal and state universal service mechanisms be specific, sufficient and predictable in order to preserve and advance universal service throughout the United States.[4] Because all of the proposals contain some requirements that would jeopardize the sufficiency of the universal service funding mechanisms, NTCA cannot endorse any one proposal in its entirety.

In these comments, NTCA addresses the main provisions in the proposals and makes recommendations regarding which provisions the Joint Board should abandon and which provisions the Joint Board should support. In addition, NTCA proposes that in order to protect the long-term viability of the high-cost universal service fund and adhere to Section 254's requirements of "comparability" and "sufficiency,"[5] the Joint Board recommend to the Commission that it: (1) continue to permit rate-of-return (RoR) rural carriers to base their high-cost universal service support on embedded costs; (2) continue to allow RoR carriers to use their study area average cost to determine sufficient support necessary to recover their investment in network facilities needed to provide comparable rates and services to customers living in rural and high-cost areas; (3) continue to establish and enforce stringent standardized ETC guidelines and public interest test for CETC applicants in rural ILEC service areas; (4) continue to use the statutory definition of a rural telephone company to determine which carriers are eligible for

[3] Public Notice, "The State Allocation Mechanism: A Universal Service Reform Package", proposed by Joint Board Member Ray Baum, Appendix A; "Three Stage Package for Universal Service Reform", proposed by Joint Board Member Billy Jack Gregg, Appendix B; "A Holistically Integrated Package", proposed by Commissioner Robert Nelson, Appendix C; "Universal Service Endpoint Reform Plan (USERP)", proposed by Joel Shifman, Peter Bluhm and Jeff Pursley, Appendix D.
[4] 47 U.S.C §254(b)(5).
[5] 47 U.S.C §254(b)(5) and §254(e).

rural high-cost universal service support; (5) eliminate the identical support rule; (6) require CETC's to base their support on their own costs; and (7) expand the base of USF contributors to include facilities-based and non-facilities-based voice over Internet protocol (VoIP) and IP-enabled service providers.

II THE STATE-WIDE AVERAGING WOULD UNDERMINE SUFFICIENT SUPPORT FOR RURAL ILECS AND THE AVAILABILITY OF AFFORDABLE SERVICE FOR RURAL CONSUMERS

Statewide averaging would result in insufficient support for many of the approximately 1000 rural ILECs serving nearly 40 percent of the geographic area of the United States, including Alaska and Hawaii.[6] The Rural Task Force (RTF) has shown that 37 states, territories, and protectorates which currently receive rural high-cost USF support would cease to receive support if the statewide averaging approach in the non-rural high-cost methodology were used to determine the level of rural ILEC high-cost USF support.[7] Each of the four Joint Board proposals contained in the Public Notice, however, ignore the Rural Task Force findings and propose the use of statewide cost/rate averages to determine federal USF for rural and non-rural carriers.

NTCA has consistently opposed the use of statewide averages to determine a state's eligibility for rural federal USF support and a carrier's eligibility for rural USF support. As the Rural Task Force demonstrated convincingly in its recommendation to the Joint Board on September 29, 2000:

[6] The use of statewide average costs in the non-rural ILEC universal service mechanisms has resulted in distortions, which are likely to carry over if applied to rural ILECs. As a result of statewide averaging of non-rural support, only eight states currently receive non-rural high-cost support. This has led Qwest to seek federal legislative relief for states it serves which do not receive non-rural high-cost support. Statewide averaging of federal USF support will be opposed by rural and non-rural carriers alike in the upcoming rewrite of the Act.

[7] See, *In the Matter of Federal-State Joint Board on Universal Service*, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, 16 FCC Rcd 6162, 6182, (2000)(RTF Joint Board Recommendation).

> [A]pplying the FCC's Synthesis Cost Model directly to the task of sizing the national Rural Carrier high cost fund and using the same policy mandates adopted for non-Rural Carriers would reduce available support to Rural Carriers from the current $1.553 billion to $451 million, a reduction of over one billion dollars. **A primary reason for that reduction was the FCC's decision to rely on a nationwide benchmark and statewide cost-averaging to determine a "sufficient" level of funding for non-Rural Carriers.** Because Rural Carriers represent only a fraction of the overall industry, their addition in determining the national average cost benchmark changes the average by only a small amount, even though as a group the average total cost of service for Rural carriers is more than twice that of non-Rural Carriers.[8]

The RTF recommendation to use an embedded cost methodology, without the use of statewide averaging, to determine rural ILEC support was based on a plethora of complex and interrelated factors. A primary factor behind the RTF recommendation was the marked differences between the service areas of rural telephone companies as defined by the Act and areas served by non-rural companies.[9] The RTF analyzed and documented these differences in "White Paper 2: The Rural Difference."[10] Another significant factor behind the RTF recommendation was the differences in the average cost to provide service between rural and non-rural carriers. In White Paper 4: A Review of the FCC's Non Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies,[11] the RTF estimated that the national average cost per line for rural ILECs was $59.36 per line compared to an estimated $23.52 per line for non-rural ILECs.[12] The Rural Task Force believed that policymakers would not adopt a statewide cost-averaging or a non-rural proxy model for rural ILECs based on this knowledge.[13] The Rural Task Force was correct.

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[8] RTF Joint Board Recommendation, 16 FCC Rcd 6165, 6182, (2000).
[9] *Id*.
[10] Available at www.wutc.wa.gov/rtf/rtfpub.nsf
[11] *Id.*
[12] RTF Joint Board Recommendation, 16 FCC Rcd 6165, 6182, notes 33, 34 and 35.
[13] *Id.*

On December 22, 2000, the Joint Board had the benefit of the lengthy RTF deliberations and a substantial evidentiary record when the Joint Board endorsed the RTF recommendation stating that it would "serve as a good foundation for implementing a universal service plan that benefits consumers," … provide a "predictable level of universal service support" and "would provide a stable environment for rural carriers to invest in rural America."[14] On May 21, 2001, the Commission agreed and adopted a modified embedded cost methodology to determine federal high-cost support for rural carriers, without statewide averaging.[15] The 2005 Joint Board does not have the benefit of similar deliberations and evidentiary record to support the most recent statewide averaging proposals.

The current use of study area average costs in the high-cost universal service rules have allowed rural carriers to recover their investment in the total network facilities needed to provide comparable rates and affordable services to customers living in rural and high-cost areas. Most rural ILECs serve a single study area in a state and these study areas are generally the highest cost areas in the state. Rural ILECs, unlike non-rural ILECs and large wireless CETCs, simply do not have high-density, low-cost metropolitan or urban areas that can be used to offset the high-cost of their sparsely populated rural service areas. Basing federal USF support on statewide averages would reduce rural ILEC support dramatically and would significantly undermine a rural ILEC's ability to invest in its network. The Commission correctly recognized this reality in 2001 when it adopted a modified embedded cost methodology to determine rural

[14] RTF Joint Board Recommendation, 16 FCC Rcd 6165.
[15] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers,* CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244 (2001) (Rural Task Force Order).

high-cost support for rural carriers and based that support on each rural ILEC's study area costs.[16]

Any future revisions to the rural high-cost USF mechanism must permit rural ILECs to recover their investment in the network facilities needed to provide comparable rates and services to rural consumers living in high-cost areas. High-cost support reflects the legitimate costs of rate-of-return rural carriers serving their entire rural study areas, an obligation that is imposed on these companies as carriers of last resort. Without support for the entire cost of the network, many consumers living in rural high-cost regions of the United States would not have access to affordable and comparable telecommunications and advanced services.

Rural ILECs are making good on their promise to deliver broadband services to rural areas.[17] Rural ILECs have made significant investments in the rural high-cost portions of America under an existing universal service support system that allows for a full recovery of a sufficient portion of a carrier's embedded costs of total regulated facilities. If these costs are no longer recovered through universal service, and an alternative recovery method is not available or prohibited by regulators, then these costs will become stranded investment.[18] As Commissioner Copps stated:

> [i]t is essential, that any regime we adopt increase certainty so that rural carriers can plan for the future and undertake necessary investment to modernize the telecommunications infrastructure in their communities.[19]

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[16] *Id.*
[17] *NTCA 2005 Broadband/Internet Availability Survey Report,* www.ntca.org.
[18] The term "stranded investment" typically means plant facilities that are no longer in use and have not fully recovered their costs. However, in the context of this proceeding, stranded investment can result in plant facilities that are not fully recovering their costs but are still in use.
[19] *In the Matter of the Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256; *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45; *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation,* CC Docket No. 98-77; *Prescribing the Authorized Rate of Return for*

Limiting support to anything less than the total cost of network facilities will halt future investment to modernize the telecommunications infrastructure in rural America and jeopardize the ability of rural carriers to service debt for plant facilities already constructed and lawfully approved by regulators. Given the Act's goal of preserving and advancing universal service to ultimately provide consumers with access to advanced telecommunications and information services, such a result would be completely at odds with the intent of Sections 254 and 706 of the Telecommunications Act of 1996. The Joint Board therefore should not recommend the use of statewide averaging to determine rural ILEC high-cost support. It should instead recommend that the Commission continue to allow rural ILECs to use their study area average costs in the current embedded cost methodology for determining rural high-cost USF support.

III. THE BLOCK GRANT PROPOSALS WOULD VIOLATE THE LAW

All four of the Joint Board proposals advocate the use of block grants whereby a state would receive a block grant of federal USF support. The amount of the state block grants would be determined through various statewide cost averaging and rate averaging/revenue benchmarking formulas. For example, the State Allocation Mechanism (SAM) proposal by Commissioner Ray Baum of Oregon would provide a block grant of federal high-cost USF support to a particular state using the following formula:

a. A statewide average cost model (based on embedded cost or forward looking economic cost (FLEC)) would be used to determine statewide average cost benchmark.

b. A statewide average rate benchmark would be compared to the statewide average cost benchmark.

Interstate Services of Local Exchange Carriers,(2001)(MAG Order), *Dissenting Statement of Commissioner Michael J. Copps.*

c. The statewide rate benchmark would be subtracted from the statewide cost benchmark to determine the amount of federal USF support credited to the state's account at USAC. Federal USF contributions would be made to USAC. Distributions of federal USF support, however, would be made directly to eligible telecommunications carriers (ETCs) with the caveat that the state commissions would make all distribution decisions to ETCs based on their interpretation of new FCC guidelines.[20]

Under all four proposals, state commissions would have the discretion to determine which carriers receive federal USF support and how much support based on a state commission's interpretation of the FCC's yet to be defined new federal high-cost support distribution guidelines. Granting authority to state commissions to determine the amount of federal universal service support a carrier would receive would violate the Act and the Tenth Amendment.

Indeed, the Joint Board has previously acknowledged the legal and administrative concerns associated with distributing federal USF support to the states through block grants.

> [W]e cannot recommend that the Commission adopt [a state block grant] mechanism, in light of the long-standing practice at the time that the 1996 Act became law of distributing federal universal service support to the carriers providing the supported services, and **the absence of any affirmative evidence in the statute or legislative history that Congress intended such a fundamental shift to a state block grant distribution mechanism.** In addition, distributing funding directly to state commissions is likely to create substantial administrative burdens for states…."[21]

Section 254 of the Act does **<u>not</u>** grant state commissions the authority to determine how much federal USF support an eligible carrier will receive. Nor did Congress explicitly direct the Commission to grant states this type of control over the federal universal service support dollars.

The Tenth Amendment provides that "the powers not delegated to the United States by the Constitution, nor prohibited by its States, are reserved to the States respectively, or to the

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[20] The State Allocation Mechanism: A Universal Service Reform Package, proposed by Joint Board Member Commissioner Ray Baum of Oregon, Public Notice, Appendix A, pp. 3-5.

[21] *In the Matter of Federal-State Joint Board on Universal Service,* Second Recommended Decision, CC Docket 96-45, ¶ 61 (rel. Nov. 25, 1998)(emphasis added).

people." Section 254(d) of the Act provides the Commission with the authority to decide how much and to whom federal USF support will be collected and distributed based on **interstate** telecommunications services. In comparison, Section 254(f) provides the states with the authority to adopt regulations not inconsistent with the FCC rules to preserve and advance universal service and allows the states to establish state universal service funding rules based on **intrastate** telecommunications services. Congress clearly envisioned that the Commission would decide federal USF collection and distribution issues and states would decide state USF collection and distribution issues. Delegating to state commissions the sole discretion over decisions concerning the distribution of federal USF support would therefore be contrary to intent of Congress, Section 254 and the Tenth Amendment.[22]

Distributing federal USF funding directly to state commissions may also create substantial administrative burdens for some state commissions that are understaffed and lack the resources necessary to adequately implement procedures and rules to properly manage and monitor a block grant distribution system. Many state commissions today are pushed to their limit to meet their current mandates under state and federal law. Imposing the additional responsibilities could be asking far too much for some state commissions and could result in federal USF support being improperly determined and distributed. Having potentially many different state commissions determining federal USF support and subjectively distributing

[22] A challenge to a state commission's authority to decide how much federal USF support a carrier receives within a state could be challenged by an adversely affected party which would likely require the Commission to be a party to the litigation.

support to selected ETCs could make the Commission's efforts to improve its management, oversight and performance of the federal USF support mechanisms much more difficult.[23]

Moreover, the proposed block grants could allow a state commission to divert federal USF support which is based on costs and reward federal USF support to carriers based on factors unrelated to costs.[24] This would be contrary to the Commission's longstanding policy of distributing federal universal service support directly to rural ILECs based on their specific costs to provide supported services to consumers living in high-cost areas. This policy has enabled the Commission to reach and maintain a 95 percent universal service penetration rate in U.S. households. Adopting a block grant proposal could jeopardize this achievement by the United States and create significant disincentives for rural carriers to continue to invest and to provide high-quality affordable basic and advance services to their rural communities.[25]

If decisions concerning the distribution of support to carriers are not based on each rural carrier's actual costs to serve their study area, some rural ILECs will not receive sufficient federal support necessary to maintain their facilities and provide affordable services in their service areas. If rural carriers are under-funded based on a state commission's USF distribution decision, their ability to provide affordable service will be compromised and the consumers they serve will suffer through higher/unaffordable rates and/or diminished service quality. If rates are

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[23] *In the Matter of Comprehensive Review of Universal Fund Management, Administration, and Oversight,* WC Docket No. 05-195*; Federal-State Joint Board on Universal Service,* CC Docket No. 96-45*; Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6*; Rural Healthcare Support Mechanism,* WC Docket No. 02-60; *Lifeline and Link-Up,* CC Docket No. 03-109*; Changes to the Board of Directors for the National Carrier Association,* CC Docket No. 97-21, FCC 05-124 (rel. June 14, 2005)

[24] The Holistic Integrated Package (HIP) Proposal, Submitted by Commissioner Robert Nelson of the Michigan Public Service Commission, Public Notice, Appendix C, p. 15, suggests, for example, State A could distribute federal USF support to ETCs, in accordance with FCC guidelines but may determine that more than one carrier could be funded in a given rural area, while State B could determine that only one carrier could be funded in a similar rural area. In addition, state commissions could consider Lifeline/Link-up participation when determining the amount of federal high-cost USF support each carrier receives.

[25] Section 254(b)(5) of the Act states that Federal and State mechanisms to preserve and advance universal service should be specific, predictable and sufficient.

too high, the essential telecommunications services encompassed in universal service may indeed prove unavailable.[26] It is conceivable that some households in high-cost rural areas that do not qualify for Lifeline and Linkup support would no longer be able to purchase telecommunications and/or information services, if rates increase significantly. Increased rural consumer rates as a result of block grants and statewide averaging would also threaten the President's goal of making affordable high-speed Internet access available to all Americans by 2007 and the Act's goal of encouraging the deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis.[27] To avoid these potentially harmful affects on rural consumers, NTCA urges the Joint Board to exclude block grant and statewide averaging provisions in its recommendation to the Commission.

IV. THE JOINT BOARD SHOULD REJECT A PER-LINE FREEZE OF ILEC SUPPORT UPON CETC ENTRY, AND INSTEAD RECOMMEND THE ELIMINATION OF THE IDENTICAL SUPPORT RULE AND REQUIRE CETCS TO BASE THEIR SUPPORT ON THEIR OWN COSTS

One of the Joint Board Proposals recommends a per-line freeze to control the growth of the high-cost universal service fund.[28] This is the wrong approach. Rather than using a per-line freeze, which would unjustifiably punish rural ILEC's for providing affordable, reliable, and quality services to rural consumers based on legitimate costs, the Joint Board should recommend that the proper appropriate approach to control the growth of the high-cost fund is to eliminate the identical support rule[29] and require CETCs to base their support on their own costs.[30]

[26] *Qwest v. FCC*, 398 F.3d 1222, 10th Cir., Feb. 23, 2005, at 29 (Qwest II). This case can also be found on the FCC's Webpage as *Qwest v. FCC*, 10 Circuit Case No. 03-9617.
[27] 47 U.S.C § 706.
[28] Three Stage Package for Universal Service Reform", proposed by Joint Board Member Billy Jack Gregg, Director of the West Virginia Consumer Advocate Division, Public Notice Appendix B, p. 9.
[29] Universal Service Endpoint Reform Plan (USERP), proposed by Joel Shifman, Peter Bluhm and Jeff Pursley, Public Notice, Appendix D, p 26, recommends the elimination of the identical support rule.

Congress required restrictions on both the use and level of federal USF support. The United States Court of Appeals for the 5th Circuit has already warned: "excessive funding may itself violate the sufficiency requirement of the Act."[31] The Commission, however, has yet to establish a relationship between a CETC's cost and the support the CETC receives. A per-line freeze on ILEC support will not address this fundamental flaw in the Commission's rules and will only make it more difficult for rural ILECs to maintain and upgrade their networks, which will ultimately harm rural consumers. Without predictable support that consistently allows for full cost recovery, a rural ILEC will no longer be able to provide consumers with services and rates that are reasonably comparable to those offered in urban areas. If rural consumers are unable to receive access to reasonably comparable services and rates, then support is not sufficient, as required by the Act.[32]

The identical support rule provides CETCs with the same per-line support regardless of their cost structure and defeats the Commission's guiding principle of "competitive neutrality." The rule has undermined the Commission's ability to ensure that CETC support is not excessive and used for the purposes intended.[33] The rule permits CETCs to receive ILEC per line support for every working loop they serve in the ILEC's service area, regardless of whether the CETC's costs to provide service are below the national benchmark to qualify for support. Basing CETC support on ILEC costs is the main reason for the growth of the high-cost universal service fund.

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[30] Three Stage Package for Universal Service Reform", proposed by Joint Board Member Billy Jack Gregg, Director of the West Virginia Consumer Advocate Division, Public Notice, Appendix B, p. 10 (Basing embedded cost support on each carrier's own costs would prevent potential windfalls to competitive ETCs with lower cost structures than incumbents).

[31] *Texas Office of Public Utility Counsel v. FCC,* 183 F.3d at 412 (U.S.C.A. 5th Cir. 1999) (Excessive funding may itself violate the sufficiency requirement of the Act).

[32] 47 U.S.C. §254(b)(3).

[33] 47 U.S.C. §254(e).

Rural ILECs are carriers of last resort in their respective study areas and have demonstrated their costs and justified their need for universal service support. Rural ILECs also have a continuing obligation to maintain and upgrade their networks regardless of whether they lose lines to CETCs. CETCs, on the other hand, have neither carrier of last resort obligation nor the requirement to demonstrate their costs and justify their need for support. Capping rural ILEC per-line support upon competitive entry therefore would result in a funding level shortfall for rural ILECs in violation of the Act and constrain their ability to recover legitimate costs that were lawfully approved by state and federal regulators. The Joint Board should therefore not recommend a per-line freeze on rural ILEC support upon CETC entry. It should instead recommend that the Commission eliminate the identical support rule and require all CETCs to base their support on their own costs before they receive any support. This will enable the Commission to control the growth of the universal service fund and help ensure that CETC support is not excessive and used for the purposes intended.

V. THE JOINT BOARD SHOULD RECOOMEND THE CONTINUED USE OF THE STATUTORY DEFINITION OF A RURAL TELEPHONE COMPANY TO DETERMINE WHICH CARRIERS ARE ELIGIBLE FOR RURAL HIGH-COST SUPPORT

Some of the Joint Board proposals seek to change the definition of a rural telephone company and move larger rural carriers to the Commission's high-cost model for non-rural carriers and eventually eliminate the differences between rural and non-rural carriers for purposes of high-cost universal service support.[34] The Joint Board should reject this idea and recognize the significant differences between rural and non-rural carriers. The Joint Board should not attempt to use size alone as a determinant of what type of company is eligible to

[34] Three Stage Package for Universal Service Reform, proposed by Joint Board Member Billy Jack Gregg, Director of the West Virginia Consumer Advocate Division, Public Notice Appendix B, pp. 8-13.

receive support using the "rural" or "non-rural" mechanism, nor should it attempt to squeeze rural ILECs into a one-size fits all rural/non-rural USF mechanism. The higher costs to serve customers in rural telephone company service areas are a driving force that makes it imperative to retain a separate rural mechanism that will maintain universal service in high-cost, rural and insular areas in a manner consistent with the principles in Section 254(b) of the Act. The Federal-State Joint Board that recommended a modified embedded cost mechanism for rural telephone companies relied on the Rural Task Force recommendation which documented these differences. These differences still exist today and will exist in the foreseeable future.

VI. THE JOINT BOARD SHOULD RECOMMEND TO THE COMMISSION THAT IT EXPAND THE BASE OF USF CONTRIBUTORS TO INCLUDE FACILITIES-BASED AND NON-FACILITIES-BASED VoIP AND IP-ENABLED SERVICE PROVIDERS

The Commission has the authority to expand the number and types of contributors to the fund to ensure "sufficient" support to achieve the goals of the Act. NTCA believes that the time is ripe for the Commission to expand the list of contributors to include both facilities-based and non-facilities-based voice over Internet protocol (VoIP) and IP-enabled service providers that connect to or benefit from connection to the public communications network, regardless of the classification of the service as an information service, telecommunications service, private carriage service or some other service. The universe of communications carriers and providers of communications services has expanded far beyond the boundaries that existed when the Commission first identified contributors to the universal service fund. It is time for the Joint Board to recommend to the Commission that it expand the base of contributors to ensure contributions on an equitable and nondiscriminatory basis pursuant to Section 254(d) and ensure the preservation and advancement of the USF mechanisms pursuant to Section 254(b)(5).

VII. CONCLUSION

Based on the above reasons, the Joint Board should not propose statewide averaging and state block grants of federal USF as part of its recommendations to modify the rural federal high-cost universals service rules. Instead, the Joint Board should recommend that the Commission:

(1) continue to permit rate-of-return (RoR) rural carriers to base their high-cost universal service support on embedded costs;

(2) continue to allow RoR carriers to use their study area average costs to recover their investment in the total network facilities needed to provide comparable rates and services to customers living in rural and high-cost areas;

(3) continue to establish and enforce more stringent standardized ETC guidelines and public interest test for CETC applicants in rural ILEC service areas;

(4) continue to use the statutory definition of a rural telephone company to determine which carriers are eligible to receive rural high-cost universal service support;

(5) eliminate the identical support rule;

(6) require all CETC universal service support to be based on their own costs; and

(7) expand the base of USF contributors to include all voice over VoIP and IP-enabled service providers.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
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CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, FCC 05J-1 was served on this 30th day of September 2005 by electronic mail to the following persons.

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